

**REMARKS**

Applicant wishes to thank the Examiner for the notice of allowable subject matter. Applicant has amended claims 1, 10-13, 15, 19, and 21. Claims 22 through 37 are cancelled without prejudice. Applicant has added new claims 38 through 45 for examination.

**I. REJECTION OF CLAIMS 10 THROUGH 12 UNDER 35 U.S.C. § 112**

Applicant respectfully traverses the Examiner's rejection of claims 10 through 12 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended claims 10 through 12 of the application to comply with § 112 as requested by the Examiner. Applicant has amended claim 10 so that said claim is dependent upon claim 9, which discloses "a soft layer," rather than upon claim 1, which does not disclose said soft layer. This amendment provides proper antecedent basis for "the soft layer" as disclosed in claim 10. Applicant has also amended claims 11 and 12 to replace the word "lower" in each of said claims with the word "bottom," as recited in claim 1, thereby clarifying said claims and resolving the antecedent basis problem. Applicant respectfully requests that the Examiner withdraw these rejections and allow claims 10 through 12.

**II. REJECTION OF CLAIMS UNDER 35 U.S.C. § 102(b)**

**A. FREITAS ET AL.**

Applicant respectfully traverses the Examiner's rejection of claims 1, 3, 4, 5, 6, and 8 under 35 U.S.C. § 102(b) as being unpatentable over Freitas et al., U.S. Patent No.

6,197,011. Applicant's invention differs markedly from the invention described by the Freitas reference in several aspects.

**1. Claims 1, 3, 4, 5, and 6**

Concerning claim 1, the Examiner states that the Freitas reference shows "a diaper capable of being worn on a pet comprising a lightweight upper portion (28) and an absorbent bottom portion (27), comprising: means for securely attaching the diaper to the pet; and layered means for absorbing generally liquid discharge of the pet, whereby the diaper closely conforms to the contours of the pet's body." The Freitas reference discloses a human male incontinence diaper in the form of an absorbent male codpiece that includes a back panel (11) connected to a front flap (22), thereby creating a void for receiving and holding a human penis that is inserted through a hole (18) of said back panel (11). Figures 1 and 3 of the Freitas patent clearly demonstrate that the Freitas invention is incapable of being worn by a pet as alleged by the Examiner. Moreover, Applicant's invention is not sex-specific, that is, Applicant's pet diaper may be worn by both male and female pets, whereas the Freitas invention is designed and adapted specifically for wear and use by a human male.

The Examiner also has not demonstrated that the Freitas reference discloses the layered means claimed by Applicant. The layered means element of claim 1 must be construed to cover the corresponding structure and material described in the specification and equivalents thereof. 35 U.S.C. § 112, sixth paragraph. Referring to paragraph [20] of the specification, Applicant discloses that the layered means of claim 1 comprises preferably "a plastic outer layer 40, a superabsorbent layer containing superabsorbent

material such as cross-linked sodium polyacrylate 42, and a soft layer 44.” See also Figure 4 of the present application. Applicant also discloses that “[t]he superabsorbent polyacrylate layer preferably lies between an upper means for storing liquid 46 and an outer means for storing liquid 48, such as cellulose or an equivalent material.” Finally, Applicant discloses that the suberabsorbent material is included in the diaper preferably in elongated channels through the bottom portion of said diaper which are oval-shaped in cross-section. These features of a layered means are not disclosed by the Freitas reference, which simply describes both the front flap and back panel of that invention as comprising (1) a fluid absorbing fabric material, such as a cotton fluid absorbent material, and (2) a water impermeable layer. Thus, in construing the layered means of claim 1 to cover the corresponding structure and material described in the specification and equivalents thereof, the Examiner not demonstrated that the Freitas reference discloses the layered means as claimed by Applicant. The Examiner’s rejection of claims 1, 3, 4, 5, and 6 under 35 U.S.C. § 102(b) cannot be sustained.

In addition, Applicant’s invention is not anticipated by the Freitas reference because although the general subject matter of the Freitas invention and Applicant’s invention are similar, the specific application and use are different. Union Oil Co. of California v. Atlantic Richfield Co., 208 F.3d 989 (Fed. Cir. 2000). As stated above, the Freitas reference discloses a penile diaper pouch attached about the waist of a human male using a belt strap, while Applicant’s invention discloses a unisex pet diaper that may be worn by both male and female pets of numerous pet animal species.

Finally, dependent claims 3 through 6 ultimately depend upon independent claim 1,

and thus, incorporate by reference all of the elements and limitations of independent claim 1. 35 U.S.C. § 112, fourth paragraph. This includes the novel feature disclosed in claim 1 of a layered means for absorbing generally liquid discharge of the pet, whereby the diaper closely conforms to the contours of the pet's body. As explained above, the layered means, as construed by reference to Applicant's specification, is not disclosed by the Freitas reference. Therefore, the Examiner's rejection of Applicant's claims 3 through 6 under 35 U.S.C. § 102(b) cannot be sustained. Applicant respectfully requests that the Examiner withdraw this rejection and allow said claims.

## **2. Claim 8**

Dependent claim 8 ultimately depends upon independent claim 1, and thus, incorporates by reference all of the elements and limitations of independent claim 1. 35 U.S.C. § 112, fourth paragraph. This includes the novel feature disclosed in claim 1 of a layered means for absorbing generally liquid discharge of the pet, whereby the diaper closely conforms to the contours of the pet's body. As explained above, the layered means, as construed by reference to Applicant's specification, is not disclosed by the Freitas reference. Therefore, the Examiner's rejection of Applicant's claim 8 under 35 U.S.C. § 102(b) cannot be sustained. Applicant respectfully requests that the Examiner withdraw this rejection and allow claim 8.

Moreover, the Examiner states that the Freitas invention "further [comprises] means for holding the diaper around the pet's tail." The Freitas reference discloses a human male incontinence diaper. Humans do not have tails, and therefore, the Freitas reference does not disclose any element for holding the diaper of said invention around a tail. The

Examiner may be attempting to cite the elongated strips (31) of Freitas as means for holding said diaper around a tail, however, the Examiner has already referred to said elongated strips as corresponding to another element of Applicant's invention, namely the means for securely attaching the diaper to the pet described in claim 1 of the present application.

To sustain an anticipation rejection under 35 U.S.C. § 102(b), the Examiner is required to demonstrate "the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick, Co., 730 F.2d 1452, 1458 (Fed. Cir. 1984); see also W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554 (Fed. Cir. 1983). Because Applicant's claim 8 is dependent upon independent claim 1, the Examiner may not examine claim 8 in a vacuum but must consider the elements of dependent claim 8 along with all of the limitations set forth in the elements of claim 1. The Examiner may not use one element of the Freitas reference to anticipate two distinctly separate elements of the Applicant's invention, i.e., the strips that serve as the means for securely attaching the diaper to the pet (claim 1) and the hole formed by slits 62 and 64 through upper portion 12 that serves as the means for holding the diaper around the pet's tail (claim 8). The Examiner has not demonstrated that the Freitas reference includes each and every element of the Applicant's invention arranged as in the Applicant's claims, and thus, the Examiner's rejection of claim 8 under 35 U.S.C. § 102(b) cannot be sustained.

## **B. OHTA**

Applicant respectfully traverses the Examiner's rejection of claims 1, 2, 4, and 8

under 35 U.S.C. § 102(b) as being unpatentable over Ohta, U.S. Patent No. 5,954,015. The Examiner has not demonstrated that the Ohta reference discloses the layered means claimed by Applicant. The layered means element of claim 1 must be construed to cover the corresponding structure and material described in the specification and equivalents thereof. 35 U.S.C. § 112, sixth paragraph. Referring to paragraph [20] of the specification, Applicant discloses that the layered means of claim 1 comprises preferably “a plastic outer layer 40, a superabsorbent layer containing superabsorbent material such as cross-linked sodium polyacrylate 42, and a soft layer 44.” See also Figure 4 of the present application. Applicant also discloses that “[t]he superabsorbent polyacrylate layer preferably lies between an upper means for storing liquid 46 and an outer means for storing liquid 48, such as cellulose or an equivalent material.” Finally, Applicant discloses that the superabsorbent material is included in the diaper preferably in elongated channels through the bottom portion of said diaper which are oval-shaped in cross-section. These features of a layered means are not disclosed by the Ohta reference, which simply describes an animal diaper comprising (1) an inner permeable sheet, (2) an outer water-proof sheet, and (3) an absorbent material located between the permeable sheet and the water-proof sheet. See Ohta, claim 1, and column 2, lines 61-65. Clearly, these elements are not the same as those described by Applicant’s specification with respect to Applicant’s layered means in claim 1. Thus, in construing the layered means of claim 1 to cover the corresponding structure and material described in the specification and equivalents thereof, the Examiner has failed to demonstrate that the Ohta reference discloses the layered means as claimed by Applicant. The Examiner’s rejection of claims 1, 2, 4, and 8 under 35 U.S.C. § 102(b)



cannot be sustained.

Dependent claims 2, 4, and 8 ultimately depend upon independent claim 1, and thus, incorporate by reference all of the elements and limitations of independent claim 1. 35 U.S.C. § 112, fourth paragraph. This includes the novel feature disclosed in claim 1 of a layered means for absorbing generally liquid discharge of the pet, whereby the diaper closely conforms to the contours of the pet's body. As explained above, the layered means, as construed by reference to Applicant's specification, is not disclosed by the Ohta reference. Therefore, the Examiner's rejection of Applicant's claims 2, 4, and 8 under 35 U.S.C. § 102(b) cannot be sustained. Applicant respectfully requests that the Examiner withdraw this rejection and allow said claims.

### **C. KELLY**

Applicant respectfully traverses the Examiner's rejection of claims 1 through 10 under 35 U.S.C. § 102(b) as being unpatentable over Kelly, U.S. Patent No. 5,555,847. The Examiner has not demonstrated that the Kelly reference discloses the layered means claimed by Applicant. The layered means element of claim 1 must be construed to cover the corresponding structure and material described in the specification and equivalents thereof. 35 U.S.C. § 112, sixth paragraph. Referring to paragraph [20] of the specification, Applicant discloses that the layered means of claim 1 comprises preferably "a plastic outer layer 40, a superabsorbent layer containing superabsorbent material such as cross-linked sodium polyacrylate 42, and a soft layer 44." See also Figure 4 of the present application. Applicant also discloses that "[t]he superabsorbent polyacrylate layer preferably lies between an upper means for storing liquid 46 and an outer means for storing liquid 48, such

as cellulose or an equivalent material.” Finally, Applicant discloses that the suberabsorbent material is included in the diaper preferably in elongated channels through the bottom portion of said diaper which are oval-shaped in cross-section. These features of a layered means are not disclosed by the Kelly reference, which simply describes the diaper of that invention as comprising (1) a sheet of thin, plastic, water-proof polyethylene, (2) a thick pad of conventional super-absorbent sponge or padding material, and (3) a cover of thin fabric that is porous and permeable. See Kelly, column 2, lines 51-61. These elements are not the same as those described by Applicant’s specification with respect to Applicant’s layered means in claim 1. Thus, in construing the layered means of claim 1 to cover the corresponding structure and material described in the specification and equivalents thereof, the Examiner has not demonstrated that the Kelly reference discloses the layered means as claimed by Applicant. The Examiner’s rejection of claims 1 through 10 under 35 U.S.C. § 102(b) cannot be sustained.

Finally, dependent claims 2 through 10 ultimately depend upon independent claim 1, and thus, incorporate by reference all of the elements and limitations of independent claim 1. 35 U.S.C. § 112, fourth paragraph. This includes the novel feature disclosed in claim 1 of a layered means for absorbing generally liquid discharge of the pet, whereby the diaper closely conforms to the contours of the pet's body. As explained above, the layered means, as construed by reference to Applicant’s specification, is not disclosed by the Kelly reference. Therefore, the Examiner’s rejection of Applicant’s claims 2 through 10 under 35 U.S.C. § 102(b) cannot be sustained. Applicant respectfully requests that the Examiner withdraw this rejection and allow said claims.



**D. LOWMAN**

Applicant respectfully traverses the Examiner's rejection of claims 1, 2, 4, and 8 under 35 U.S.C. § 102(b) as being unpatentable over Lowman, U.S. Patent No. 5,234,421. The Examiner has not demonstrated that the Lowman reference discloses the layered means claimed by Applicant. The layered means element of claim 1 must be construed to cover the corresponding structure and material described in the specification and equivalents thereof. 35 U.S.C. § 112, sixth paragraph. Referring to paragraph [20] of the specification, Applicant discloses that the layered means of claim 1 comprises preferably "a plastic outer layer 40, a superabsorbent layer containing superabsorbent material such as cross-linked sodium polyacrylate 42, and a soft layer 44." See also Figure 4 of the present application. Applicant also discloses that "[t]he superabsorbent polyacrylate layer preferably lies between an upper means for storing liquid 46 and an outer means for storing liquid 48, such as cellulose or an equivalent material." Finally, Applicant discloses that the suberabsorbent material is included in the diaper preferably in elongated channels through the bottom portion of said diaper which are oval-shaped in cross-section. These features of a layered means are not disclosed by the Lowman reference, which simply describes a diaper for a dog comprising (1) an outer ply that is a water-proof, thin layer and is preferably a thin-sheet plastic, (2) an absorbent layer, which is formed of multiple plies of absorbent material woven or felted in the fashion of mesh, comprising a Weyerhaeuser product made primarily of wood fluff pulp and other cellulose tissue, and also may include a cornstarch filled cover, and (3) a thin, porous exposed surface ply. See Lowman, column 4, lines 15-40, 64-68, and column 5, line 1. The absorbent layer of Lowman is disposed

between the outer ply and the exposed surface ply. Clearly, these elements are not the same as those described by Applicant's specification with respect to Applicant's layered means in claim 1. Thus, in construing the layered means of claim 1 to cover the corresponding structure and material described in the specification and equivalents thereof, the Examiner has not demonstrated that the Lowman reference discloses the layered means as claimed by Applicant. The Examiner's rejection of claims 1, 2, 4, and 8 under 35 U.S.C. § 102(b) cannot be sustained.

Dependent claims 2, 4, and 8 ultimately depend upon independent claim 1, and thus, incorporate by reference all of the elements and limitations of independent claim 1. 35 U.S.C. § 112, fourth paragraph. This includes the novel feature disclosed in claim 1 of a layered means for absorbing generally liquid discharge of the pet, whereby the diaper closely conforms to the contours of the pet's body. As explained above, the layered means, as construed by reference to Applicant's specification, is not disclosed by the Lowman reference. Therefore, the Examiner's rejection of Applicant's claims 2, 4, and 8 under 35 U.S.C. § 102(b) cannot be sustained. Applicant respectfully requests that the Examiner withdraw this rejection and allow said claims.

### **III. REJECTION OF CLAIM 11 UNDER 35 U.S.C. § 103(a)**

Applicant respectfully traverses the Examiner's rejection of claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Ohta, U.S. Patent No. 5,954,015, in view of Igaue et al., U.S. Patent No. 5,114,420. In claim 11, Applicant claims that the bottom portion of the diaper is at least partially rigid. As illustrated in Figure 2 of the present application, the bottom portion 14 of Applicant's invention comprises a central

superabsorbent portion 30 and left and right absorbent portions 32 and 34. Therefore, all three of these components 30, 32, and 34 of the bottom portion are at least partially rigid. The Ohta reference discloses an absorbent (3) sandwiched between two sheets of absorbent paper (2), one sheet being attached to an outer water-proof sheet (6) and the other to an inner permeable sheet (7). On page 5 of the Office Action, the Examiner states that the Ohta reference does not disclose a bottom portion that is at least partially rigid. See Ohta, column 2, lines 60-66, and Figure 4. The Igaue reference teaches a semi-rigid absorbent body (13) that extends nearly the entire length of the diaper in that invention. See Igaue et al., column 4, lines 33-35, and Figure 7. Moreover, the side flaps (14) disclosed in the Igaue reference are components of the rear portion of that disposable baby diaper but are not semi-rigid as are the left and right absorbent portions 32 and 34 as further defined by Applicant's claim 11. Therefore, Applicant's invention is not obvious in view of the two prior art references cited by the Examiner.

In addition, dependent claim 11 ultimately depends upon independent claim 1, and thus, incorporates by reference all of the elements and limitations of independent claim 1. 35 U.S.C. § 112, fourth paragraph. This includes the novel feature disclosed in claim 1 of a layered means for absorbing generally liquid discharge of the pet, whereby the diaper closely conforms to the contours of the pet's body. Referring to paragraph [20] of the specification, Applicant discloses that the layered means of claim 1 comprises preferably "a plastic outer layer 40, a superabsorbent layer containing superabsorbent material such as cross-linked sodium polyacrylate 42, and a soft layer 44." See also Figure 4 of the present application. Applicant also discloses that "[t]he superabsorbent polyacrylate layer

preferably lies between an upper means for storing liquid 46 and an outer means for storing liquid 48, such as cellulose or an equivalent material.” Finally, Applicant discloses that the suberabsorbent material is included in the diaper preferably in elongated channels through the bottom portion of said diaper which are oval-shaped in cross-section. These features of a layered means are not disclosed by the Ohta or Igaue references.

The Igaue reference simply describes a diaper for humans comprising (1) a liquid-permeable topsheet comprising a fibrous nonwoven fabric or a porous plastic film, (2) a liquid-impermeable backsheet comprising plastic film, a laminate sheet consisting of said plastic film, and fibrous nonwoven fabric, and (3) an absorbent body interposed between said topsheet and said backsheet. See Igaue et al., claim 1; column 3, lines 33-36; and column 4, lines 19-22. The absorbent layer of Igaue “may be, for example, of mat-like body consisting of fluff pulp mixed or not mixed with high-absorptivity polymer particles, covered at least on upper and lower sides with water-permeable sheets such as tissue paper and hydrophobic nets.” See Igaue et al., column 4, lines 28-33. These elements are not the same as those described by Applicant’s specification with respect to Applicant’s layered means in claim 1 of the present application. As explained above, the layered means, as construed by reference to Applicant’s specification, is not disclosed by the Ohta or Igaue references. Thus, the Examiner’s rejection of claim 11 under 35 U.S.C. § 103(a) cannot be sustained.

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Respectfully submitted,



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